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United States District Court
For the Judicial District of Puerto Rico

United States of America
Plaintiff

Received after
Oct 21, 2005
10:40 AM
Clerk of Court

V.

Crim. C. No. 00-108 (GZS)

Fernando Gomez-Rosario
Defendant

Request for (40 Days) continuance of sentencing hearing

Comes now the Defendant, Fernando Gomez-Rosario, ("Gomez and/or Defendant") by and through this motion and very respectfully, moves this Honorable Court for a continuance of (40 days) in Petitioner's Sentencing's hearing in order to in order to provide Defendant with constitutional Due process of law at his sentencing hearing and

in support hereof Defendant states the followings:

Relevant Background

On August 12-2005, the Court of Appeals for the First Circuit, Ruled on Gomez's Appeal, Affirming Gomez's conviction and Reversing Gomez's Sentence. based upon Supreme's Court's Ruling in Booker and Fanfan, which made United States Sentencing guidelines, ("U.S.S.G.") advisory. The First Circuit did not Rule on the merits of any of the attack which Gomez made to the computation of his base offense level which determined Gomez's Final Sentence.

it is the law of this circuit and of the supreme court that in order for Gomez to preserve issue again for appeal after the Remand, defendant have to Renew his objection together with memorandum of law and evidence supporting his arguments, and that district court preventing Gomez from doing so, would be a gross violation of Gomez's Due Process Constitutional Rights, As provide, the united State constitution

Gomez ~~will~~ should be allowed to Renew ~~the following~~ and present the following objection to the computation of his sentence, as well, to oblaing from his property memorandum of law, and submit them within

this court backing-up his argument, he permitted to Request downward departure and to present evidence and call witness on his defense:

Objection to be presented on Renewed

I. Gomez's testimony at the second trial did constituted perjury, therefore the two (2) levels enhancement to Gomez's base offense level ("B.O.L.") were wrongfully Applied. Gomez should be permitted to a memorandum of law which he has already prepared in property to support this argument and to subpoena witness that will corroborate Gomez's statements the name of that witness is in Gomez's property

II. That weapon allegedly found in the rooming, in which, Gomez arrived to the Hotel Iberia the date of his arrest. was not in Gomez's possession, therefore a two levels enhancement for the possession of that Gun was wrongfully Applied. Gomez should be permitted to obtain from his property, a memorandum of law and submit with in this court to support it claims.

III. District court should have granted for (4) level downward departure as to minor participant, based upon Government allegation That Gomez went to the Hotel to pick up drugs ("mula") Gomez having digested both trial's

and collected the Government's Allegations support his claims, as well a memorandum of law have been drafted by Gomez, taking into account the basis for used by District to deny Gomez's Request back 11-04-2005. however, Gomez tried to uplaint this from his property.

IV. Doctrine of collateral stepped bars
District Court from making additional determination to enhance Gomez's "BCL" by increasing the drug amount, which was charged in the indictment and the jury rejected it; two contradicting ~~jud~~ judgment based upon the same evidence clearly violates

the doctrine of ~~the~~ collateral stoppel doctrine

V. Due to the fact that Indictment against Gomez did not name any co-conspirator, in order for the court to make finding that Gomez could be held Responsible for drugs possessed by any other, it would require the court to name a co-conspirator which the grand jury did not, there, thereby depriving Gomez of the protection afforded by the grand jury clause of the Fifth Amendment and Sixth of the United States Constitution.

Gomez would be permitted to submit a memorandum of law, which he has already prepared in his property, in support hereof.

IV. Gomez fast track application

Gomez will waive the Right to fight at the immigration's court thereby saving tax's payer money and court time and Docket Jams, in exchange of downward departure ~~plaintiff~~ ~~that~~ Gomez should be permitted to submit a memorandum of law in support of this argument, which is already prepare in Gomez's property

• Gomez's immigration statute as a deportable alien place him in a harsher and Circumstances of an american citizens an example of that is the fact that Gomez's label as 'as a "deportable alien" Excluded him from^(a) Drug program

and it benefits of a year of sentence reduction including halfway ~~house~~ house; (b) ~~commu~~ community service; (c) comp minimum security; (d) and the latest fact development of the contract ~~with~~ signed between the Federal Bureau of prison and correctional Corporation of America where defendant has been ~~sentenced~~ send due to his labor as "disposable alien"

In San Juan Puerto Rico 10-21-05

